

Application No.: 09/925553

Case No.: 56950US002

Remarks

Claims 31-47 are pending. Claims 42 and 43 have been withdrawn from consideration. Claims 31, 40 and 44 have been amended.

Claims 31, 34-36, 38-41, 44-45, and 47 stand rejected under 35 USC § 102(b) as being anticipated by Wilson (U.S. No. 5,502,937). Claims 37 and 46 stand rejected under 35 USC § 103(a) as being unpatentable over Wilson in view of Eiermann (U.S. No. 4,584,214).

Independent claims 31 and 44 have been amended to more clearly indicate that the fire stop articles of the fire barrier assembly are retained within the opening without the aid of a secondary support structure. Neither of the cited references, whether taken alone or in combination, discloses, teaches, or suggests such a fire barrier assembly. More particularly, neither Wilson or Eiermann disclose a fire barrier assembly including a plurality of fire stop articles arranged in an opening without the aid of a secondary support structure. Rather, Wilson discloses that the flexible composite 72 is attached to the floor, mullion, or other parts of the building frame with attachment pins 16, 17, 18, and 19. (See col. 8, lines 43-52) If not secured to the building in this manner, the flexible composite would not pass the hose stream test of ASTM E814.

Moreover, there would there be any reason to modify or combine the references with each other or with other references in a manner that would be necessary to meet the present invention as defined by independent claims 31 and 44, as amended. Accordingly, independent claims 31 and 44, as amended, are believed to be patentable over the cited references. The remaining dependent claims, as depending from allowable claims, are also deemed to be in condition for allowance.

In addition, claim 40 has been amended to more clearly indicate that the fire stop articles are held in place in the opening by compression before they intumesce. That is, when the fire stop articles are installed in the opening, they are compressed and thereby hold each other in place. The Wilson flexible composite, in contrast, is held in place with the attachment pins prior to intumesce. Thus, at least claim 40, as amended, is also believed to contain allowable subject matter.

Application No.: 09/925553Case No.: 56950US002

In view of the above, it is submitted that the application is in condition for allowance.
Reconsideration of the application is requested.

Respectfully submitted,

February 26, 2004
Date

By: David B Patchett
David B. Patchett, Reg. No.: 39,326
Telephone No.: (651) 736-4713

Office of Intellectual Property Counsel
3M Innovative Properties Company
Facsimile No.: 651-736-3833